

'Bug' Evidence Barred in Drug Case

By J. Y. Smith

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In a decision that could stop prosecution of a "major" narcotics case here, a federal judge yesterday threw out evidence obtained with an electronic "bug" planted by D.C. police who faked two bomb scares to enter a District shoe store and install the device.

Without the evidence from the electronic surveillance, prosecutors indicated, they would not be able to go to trial against eight defendants, including a D.C. police officer, who are charged with conspiracy to sell heroin here.

All evidence of the alleged conspiracy came from conversations overheard on the "bug" in the shoe store where the defendants met, according to officials of the U.S. attorney's office, which is expected to make an appeal in the case.

The "bug" was installed in the Meljerveen Ltd. Shoe Circus, 4815 Georgia Ave. NW, last September. It was removed in October and the defendants were arrested in November.

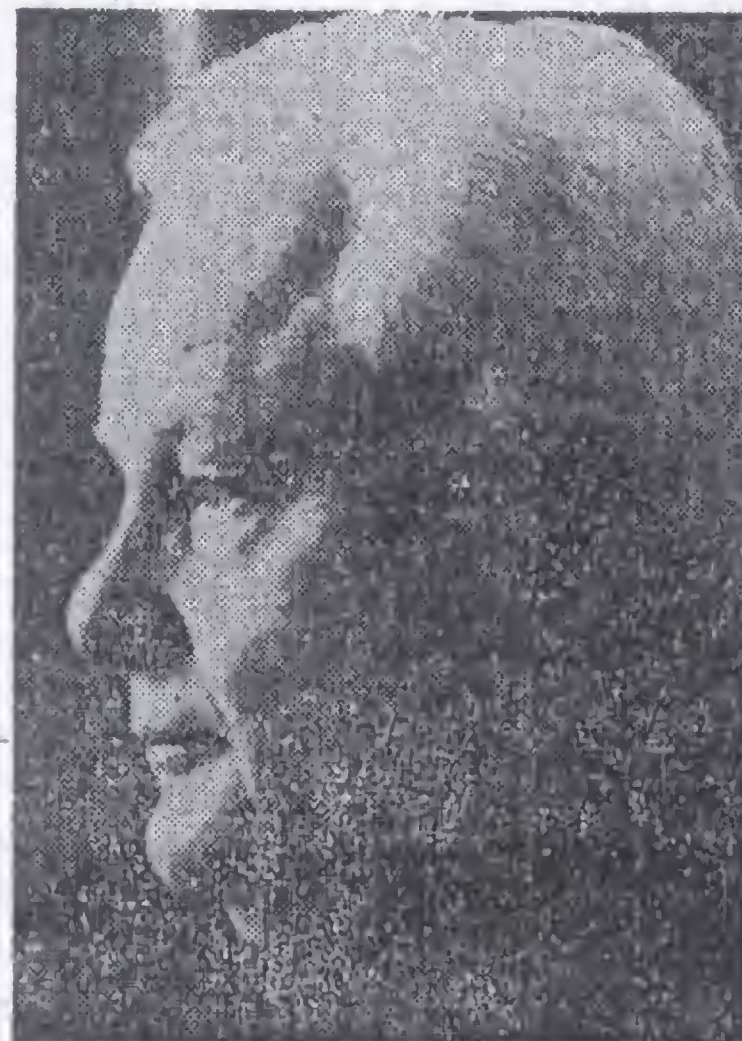
U.S. District Judge Gerhard A. Gesell ordered the evidence picked up by the listening mechanism suppressed on the ground that the warrant that authorized it was too broad in scope.

He said the warrant failed to specify the time at which it could be installed and also permitted investigators to make an unlimited number of surreptitious entries into Meljerveen.

Gesell indicated that he had no problem with the use of fake bomb scares as a means of gaining access to the premises. He noted that investigators had considered other plans, including a simulated break-in, but that these had been abandoned "because of 'Watergate' overtones."

Gesell said that the judge who issued the warrant authorizing the action, U.S. District Judge Oliver J. Gasch, had erred in failing to order a record made of the proceedings that persuaded him that the surreptitious entry was necessary.

See GESELL, A16, Col. 1



GERHARD A. GESELL
... criticizes warrant

GESELL, From A1

"There are many who would argue that in spite of these deficiencies, it goes too far to suppress the overheard conversations which undoubtedly give support to the government's prosecutions," Gesell wrote.

"The police acted with complete propriety . . . But Congress has spoken and directed suppression in these circumstances," he continued.

"It may be necessary from time to time to place 'bugging' devices in private premises, but citizens are entitled to know not only that such 'bugging' is accomplished with court authorization, but also that the authorization is limited to the narrowest precise point necessary to accomplish the law enforcement purpose and that the reasons for the intrusion are included in the public record ultimately available for further court review whenever prosecution results."

Gesell gave this account of the events that led to the

"bugging."

D.C. police and other enforcement agencies were advised that the Meljerveen shoe store was being used by persons engaged in narcotics distribution, and that these people believed their telephone had been tapped.

This meant that a "bug" would have to be put in the store to record conversations there, and to get the "bug" there, an entry would have to be made.

Officers obtained the authorizing warrant from Gasch on Sept. 4, 1975. The next day, police staged a bomb scare at the Georgia Avenue address about 11:30 in the morning. In the next half hour, they put their equipment in place while ostensibly searching for a bomb.

On the following day, they found that the equipment did not work, so they staged a second bomb scare and went back. This time they were successful.

Judge Gasch was kept informed of these developments. Investigators also made periodic reports to him during the 20 days that they were authorized to listen to conversations in the

store.

The first time the occupants of the store found out about the "bugging" was Oct. 15, when police went there with a warrant to remove the bugs, according to federal prosecutors.

For the next several weeks, the evidence was developed. On Nov. 24, in a series of raids in the Washington area and in Baltimore, 10 persons were arrested.

Among them was Thomas L. McColl, 30, of 1836 Metzgerott Rd., Adelphi, a D.C. policeman who worked in the morals division of the police department. McColl knew most of the undercover officers involved and this made the investigation more difficult, Insp. Charles Light said at the time of the arrests.

McColl, who has been on administrative leave, and the other nine persons arrested all were charged with conspiracy to distribute narcotics. The charges against two of the suspects have since been dropped.

The other seven defendants are Melvin Eugene Smith, 35, of 1836 Metzgerott Rd., Adelphi, owner of the shoe store; his two brothers,

James Leroy Smith and Melvin E. Smith, of 2300 Good Hope Rd. SE.; Carroll D. Ford, 33, of Baltimore; Wesley De Sasso Jr., 31, of 1429 D St. SE; Steve F. DaCosta, 28, of 2002 Savannah Ter. SE, and Daniel Hailey Jr., 33, of 1840 3d St. NE. All were released on bail following their arrests.